

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 1997-15]

Rulemaking Petition: Definition of "Express Advocacy"; Notice of Availability

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: Notice of availability.

SUMMARY: On October 20, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the James Madison Center for Free Speech. The Petition urges the Commission to revise its rules defining "express advocacy" to conform with a recent court decision. The Petition is available for inspection in the Commission's Public Records Office, through its FAXLINE service, and on its Internet home page.

DATES: Statements in support of or in opposition to the Petition must be filed on or before December 8, 1997.

ADDRESSES: All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up. Electronic mail comments should be sent to expressad@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Electronic comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The petitioner is requesting the Commission to revise the definition of "express advocacy" set forth in its rules at 11 CFR 100.22 to reflect the decision in *Maine Right to Life Committee v. FEC*, 914 F.Supp. 8 (D.Me. 1995), *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996), cert. denied, No. 96-1818 (U.S. 1997). Specifically, the Petition urges repeal of 11 CFR 100.22(b), which was held invalid in that case. The challenged paragraph defines "express advocacy" to include communications in which the electoral portion is "unmistakable, unambiguous, and suggestive of only one meaning, and reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action."

The "express advocacy" standard is used to determine if a disbursement qualifies as a reportable independent expenditure or membership communication for purposes of the Federal Election Campaign Act; if independent communications by corporations and labor organizations are prohibited under the Act; and if campaign communications require a disclaimer. See 2 U.S.C. 431(17) and (9)(B)(iii); 434(b)(4) and (c); 441b, 441d; *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986).

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, N.W., Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Interested persons may also obtain a copy of the Petition by dialing the Commission's FAXLINE service at (202) 501-3413 and following its instructions, at any time of the day and week. Request document #232. The text of the petition is available on the Internet at the Commission's home page, www.fec.gov.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: November 3, 1997.

Joan D. Aikens,
Vice Chairman.

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